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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/005,522	12/03/2001	Paul Theodore VanGompel	659/920	2410
7590 08/30/2005			EXAMINER	
Raymond W. Green BRINKS HOFER GILSON & LIONE P.O. BOX 10395 CHICAGO, IL 60610			STEPHENS, JACQUELINE F	
			ART UNIT	PAPER NUMBER
			3761	

DATE MAILED: 08/30/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/005,522

Applicant(s)

VANGOMPEL ET AL.

Examiner

Jacqueline F. Stephens

Art Unit

3761

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 20 July 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☐ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

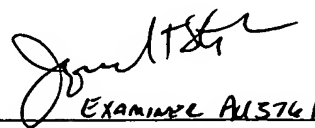
4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: _____.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____.
13. ☐ Other: _____.


EXAMINER AL5761

Continuation of 11. does NOT place the application in condition for allowance because: Applicant's arguments filed 7/20/05 have been fully considered but they are not persuasive. Applicant argues newly submitted claims 49-51 are not distinct from the invention originally claimed invention as applicant originally claimed "means for anchoring said free portions of said garment attachment panels so as to establish a predetermined deflection of said side edges where said means for anchoring said free portions of said garment attachment panels comprises mating fastener elements (see original claim 35)". Applicant contends original claim 35 and new claim 49 are directed to the same subject matter, namely fastening components that are secured one to other so as to produce a deflection of another component. However, claim 35 as amended 2/22/05, claims "means for anchoring said free portions of said garment attachment panels so as to establish a predetermined deflection of said side edges and to facilitate accurate mounting of said sanitary napkin on said undergarment, and wherein said means for anchoring said free portions of said garment attachment panels comprises mating fastener elements, one on each of said garment attachment panels, said means for anchoring said free portions being configured, on one of said garment attachment panels, in a width ..." Claim 35 does not positively recite the fasteners are mated to each other. The limitation of a 'mating fastener' is an intended use of a fastener. Giving the broadest reasonable interpretation, the 'mating fastener' of claim 35 can be mated to another fastener, another component of the article, or to an undergarment. While claim 49 positively recites the attachment panels are moveable between an unsecured position where the fastening elements are not secured one to the other and a secured position where the attachment panels extend underneath the crotch portion with "said fastening elements secured one to the other". For this reason, the examiner contends the applicant has presented two distinct species in the original claims and newly submitted claims 49-51.

Applicant repeats the argument that Osborn does not teach mating fastener elements because the fastener elements of Osborn do not and cannot mate or engage with one another. As stated above, the limitation "mating fastener" is directed to an intended use of the fastener and the limitation can be broadly interpreted to encompass mating to elements other than the fastener. The broad term 'mating fasteners' does not provide a structural limitation, as for example a cohesive-adhesive mating fastener or a hook-and-loop mating fastener. What specific structure is implied by 'mating'? Additionally, the claim does not positively recite the fasteners are mated as discussed above. Therefore, applicant is arguing features which are not recited in the rejected claims.

Applicant argues "Osborn teaches against having fastening components on opposite sides as explained in the prior response". In the prior response, the examiner assumes applicant is referring to the response filed 2/22/05, applicant stated 'the fastener elements 40 of Osborn are both disposed on the same side of the flaps 28, and are configured to engage either the undergarment itself or the other flap - not to engage the opposite fastener element'. Osborn does teach having the adhesive 40 on the face of the flap. Osborn does not teach against the fasteners mating with each other, Osborn is silent on this position. In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, the examiner has relied on Mattingly to teach the benefit of having the fasteners attach to one another, to avoid leaving adhesive residue on the undergarment.